

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Calvary Communications, Inc.	)	File No. EB-02-PA-205
	)	
Owner of Antenna Structure # 1025371	)	NAL/Acct. No. 200232400006
	)	
Pittsburgh, Pennsylvania	)	FRN 0003-1842-56

**FORFEITURE ORDER**

**Adopted: September 2, 2003**

**Released: September 4, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Calvary Communications, Inc. ("Calvary"), for repeated violation of Sections 17.4(g), 17.50 and 17.51(a) of the Commission's Rules ("Rules").<sup>1</sup> The noted violations involve Calvary's failure to post the antenna structure registration ("ASR") number at the captioned antenna structure, to adequately paint the captioned antenna structure and to exhibit all red obstruction lighting between sunset and sunrise.

2. On July 25, 2002, the Commission's Philadelphia, Pennsylvania, District Office ("Philadelphia Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to Calvary for a forfeiture in the amount of fifteen thousand dollars (\$15,000).<sup>2</sup> Calvary filed its response to the NAL on August 23, 2002.

**II. BACKGROUND**

3. Calvary owns an antenna structure, antenna structure registration ("ASR") number 1025371, located at 599 Bolton Street in Pittsburgh, Pennsylvania. The ASR for that antenna structure indicates that the height of the tower is approximately 125 meters above the ground and that painting, top beacon lighting and mid-point lighting are required. At 3:00 p.m. on May 7, 2002, an agent from the Philadelphia Office inspected antenna structure #1025371. During the inspection, the agent observed that the tower's ASR number was not posted near the base of the tower and that the tower's paint was faded, flaking and partially concealed by unpainted coaxial cables. At approximately 8:15 p.m. on both May 7 and 8, 2002, the agent returned to antenna structure #1025371 and remained there until after sunset. On both occasions, the agent observed that the tower's ASR number was not posted near the base of the

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<sup>1</sup> 47 C.F.R. §§ 17.4(g), 17.50 and 17.51(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232400006 (Enf. Bur., Philadelphia Office, released July 25, 2002).

tower; that the tower's paint was faded, flaking and partially concealed by unpainted coaxial cables; and that the tower's red obstruction lighting was extinguished at the top and mid levels of the antenna structure.

4. On May 20, 2002, the Philadelphia Office issued a Notice of Violation ("NOV") to Calvary for the violations observed on May 7 and 8, 2002. In its response, filed on June 19, 2002, Calvary stated that a lightning strike had caused the lighting outage at antenna structure #1025371. Calvary further stated that it had temporarily repaired the lighting outage and was in the process of making permanent repairs. Additionally, Calvary provided a copy of its contract with Edmiston Tower, Inc., entered into after the NOV, to paint antenna structure #1025371.

5. On July 25, 2002, the Philadelphia Office issued a *NAL* for a forfeiture in the amount of \$15,000 to Calvary. The *NAL* alleged willful and repeated violation of Sections 17.4(g) (failure to post the ASR number at tower #1025371), 17.48(a) (failure to report known lighting outage to the Federal Aviation Administration at tower #1025371), 17.50 (failure to adequately paint antenna structure at tower #1025371) and 17.51(a) (failure to exhibit all red obstruction lighting between sunset and sunrise at tower #1025371) of the Rules. In its response, filed July 19, 2002, Calvary denies violating Section 17.48(a) of the Rules. Calvary admits violating Sections 17.4(g), 17.50 and 17.51(a) but requests reduction of the proposed monetary forfeiture to \$5,000. Calvary explains that, before the lighting outage, its automatic alarm system malfunctioned and that, because it was making weekly visual checks of the lighting during the failure of the automatic alarm system, "the tower lighting could not have been out for a period of longer than seven days" prior to the FCC agent's inspection. Calvary also argues that it acted in "good faith" by quickly correcting the deficiencies,<sup>3</sup> that it has "an exemplary record of compliance" and that payment of the full forfeiture amount would be "a difficult burden" for Calvary.

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining Calvary's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup>

7. Section 17.4(g) of the Rules requires posting a tower's ASR number in a conspicuous place near the base of the antenna structure. Section 17.50 provides that antenna structures requiring painting

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<sup>3</sup> Calvary's response to the *NAL* indicates that Calvary corrected the violations of Sections 17.4(g), 17.50 and 17.51(a) of the Rules but does not indicate the exact dates of the corrections.

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

shall be cleaned or repainted as often as necessary to maintain good visibility. Section 17.51(a) requires that all red obstruction lighting be exhibited from sunset to sunrise. On the basis of the FCC agent's observations during his investigation and Calvary's response, we find that Calvary repeatedly violated Sections 17.4(g), 17.50 and 17.51(a) of the Rules.<sup>7</sup>

8. Section 503(b) of the Act gives the Commission authority to assess a forfeiture penalty against any person if the Commission determines that the person has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation or order issued by the Commission. In light of our determination that Calvary's violations were repeated, it is not necessary to determine whether they were also willful.<sup>8</sup>

9. Section 17.48(a) of the Rules requires tower owners to immediately report known lighting outages to the Federal Aviation Administration. Calvary asserts that it did not know of the outage observed on May 7 and 8, 2002, until it was notified by the Commission. In light of this assertion, we find that Calvary did not violate Section 17.48(a) of the Rules. We, therefore, will not impose a forfeiture amount for violation of Section 17.48(a).

10. Calvary's correction of its violations of Sections 17.4(g), 17.50 and 17.51(a) of the Rules does not warrant a reduction of the proposed forfeiture on the basis of "good faith." As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."<sup>9</sup> Calvary's actions before it was notified of the outage also do not warrant any "good faith" reduction. Calvary knew its automatic alarm system was malfunctioning but did not arrange for repairs until after the outage. Section 17.47(a)(1) of the Rules<sup>10</sup> required *daily* visual checks of the tower lighting<sup>11</sup> during the failure of the automatic alarm system. Calvary, however, made only weekly checks.

11. Calvary's assertion that payment of the proposed forfeiture amount would be a difficult financial burden also does not justify a reduction in the forfeiture amount. As explicitly stated in the *NAL*, we will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. We

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<sup>7</sup> As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

<sup>8</sup> *Koke, Inc.*, 23 FCC 2d 191 (1970).

<sup>9</sup> See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

<sup>10</sup> 47 C.F.R. § 17.47(a)(1).

<sup>11</sup> See, *eg.*, *Crown Communications, Inc.*, 15 FCC Rcd 21937, 21939 (Enf. Bur. 2000).

cannot consider Calvary's inability to pay claim because Calvary did not provide any financial documentation whatsoever. However, we do find that Calvary has a history of overall compliance and, accordingly, reduce the forfeiture amount to \$10,000.

12. We have examined Calvary's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Calvary repeatedly violated Sections 17.4(g), 17.50 and 17.51(a) of the Rules and that the appropriate forfeiture amount is \$10,000.

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>12</sup> Calvary **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for failure to post the ASR number, light and adequately paint the captioned antenna structure, in repeated violation of Sections 17.4(g), 17.50 and 17.51(a) of the Rules.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>13</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232400006 and FRN 0003-1842-56. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>14</sup>

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Michael F. Morrone, Esq., Keller and Heckman LLP, 1001 G Street, N.W., Suite 500 West, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>12</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>13</sup> 47 U.S.C. § 504(a).

<sup>14</sup> See 47 C.F.R. § 1.1914.